Supreme Court, U.S.
FILED
DEC 8 1999
CLERK

(3)

No. 99-674

IN THE
SUPREME COURT OF THE UNITED STATES

James Weeden, et al.,
Petitioners

vs.

Auto Workers Credit Union,
Respondent.

REPLY BRIEF OF PETITIONERS

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8pp

The Petitioners are responding pursuant to Supreme Court Rule 15(6).

QUESTION PRESENTED

Petitioners restate the Question Presented as follows:

1. The Respondents' statement regarding the remedy ordered by the Sixth Circuit Court of Appeals is not addressed in the Petitioner's motion as the Respondents question is not factually correct.

Now come the Petitioners, by and through trial counsel Heather Cockley and request the Court accept the reply brief herein for filing pursuant to their request for a Writ of Certiorari.

The respondents question presented is absolutely unfounded as the Sixth Circuit did not request nor did the parties agree to the remedy presented by the Court in its Judgment Entry.

This failure to reach an agreement was the reason the Court issued a decision after ordering the parties to mediation at the oral argument on March 11, 1998.

The Court issued its decision only when the mediation effort was unsuccessful. See Exhibit A attached hereto and incorporated herein by reference which is the affidavit of Attorney John S. Dilts, counsel for Petitioners' appeal to the Sixth Circuit, regarding the oral argument of March 11, 1998.

Further, the Petitioners state that as no agreement was reached they should be entitled to the full statutory remedies provided by law including cancellation of this debt and the return of all funds paid with statutory penalties of $1,000.00 for each violation of the Truth In Lending Act.

The Respondents cited No Error in Petitioner's brief and no authority to rebut the Petitioner's request for Certiorari as there is no legal basis for Respondent's position under the Truth In Lending Act.

Wherefore, as the lower court obviously has not followed the statutory language of the Truth In Lending Act, the Petitioners respectfully request that this Court grant their request for

A. Writ of Certiorari and hear this case or in the alternative,

B. For a remand to the Sixth Circuit with instructions and specific direction as to the Petitioner's right to the full statutory remedies herein, or

C. For a remand to the Trial court for a new trial on damages with specific instructions regarding the Truth In Lending Act remedies.

Respectfully Submitted,

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EXHIBIT A

AFFIDAVIT OF JOHN S. DILTS

STATE OF OHIO)
COUNTY OF RICHLAND)§:

Now comes John S. Dilts, attorney for the Petitioners for the purposes of appeal to and oral argument before the Sixth Circuit Court of Appeals who states and avers as follows:

1. I was counsel for the Petitioners at the circuit court level, prepared the brief for the lower court, and made the Petitioners' oral argument on the 11th day of March, 1998.

2. On the 11th day of March, 1998, the court ordered the parties into mediation during the oral arguments of the parties which were not even completed.

3. Pursuant to the court's mediation, the matter was not resolved, as no agreement could be reached and the court then rendered a decision.

4. During the oral argument, the counsel for Petitioners did once again state that the loan herein had been rescinded in a timely fashion and that the Defendant should return to them all of the funds paid.

5. Counsel for the Petitioners nor the Petitioners waived any other remedies available to the Petitioners for the Defendant's failure, to honor their recission, which would include:

a. a new trial on damages;

b. the cancellation of their mortgage for the Defendant's failure to accept tender; and

c. penalties for each violation of the Truth In Lending Act which the Defendants violated in excess of 50 times.

6. At no time, during the Oral Argument, did the court state, nor did the Petitioners agree to pay interest on this canceled loan. Further, there is no provision in the Truth In Lending Act for interest payments on a loan that has been canceled.

Further Affiant sayeth naught.

_____

John S. Dilts
Attorney at Law
Counsel for Petitioners
At Sixth Circuit Court Of Appeals

Sworn to and subscribed before me, a Notary Public, this _____ day of December, 1999.

_____

NOTARY PUBLIC